1774. *January* 13. WILLIAM STEEL *against* THOMAS and DAVID STEELS.

HOMOLOGATION.

[*Fac. Coll. VI.* 255; *Dict.* 5669.]

KAIMES. When a deed is null for want of solemnities, payment of a part is homologation, because it is an acknowledgment that the deed is binding. The present point is very nice. Suppose a man had obtained, by fraud and circumvention, a bond from a minor in favour of his three sons: after majority, the granter of the bond, from personal affection, pays the share of one of the sons; will this oblige him to pay the shares of the other two? Here is a very favourable case,—a bond of provision to younger children. Were it not for decisions, I should think that a father on death-bed might grant such a bond. The eldest son, after majority, makes some payments: How are we to separate them? Can we say that he had an affection for Thomas and David Steel, which he had not for James.

PITFOUR. We might expunge the chapter of homologation out of our law, if we were to inquire into intentions and affections. There may be equity in such inquiries, but there is no law.

[This was rather peevish, for Lord Kaimes had barely stated his doubts, and had concluded just as Lord Pitfour would have concluded.]

MONBODDO. The question is, whether payment to Thomas and David is homologation as to James? If the bonds had been separate, it is admitted that there would have been no homologation. So also, if the obligation had been to pay 2000 merks to each of them *nominatim*, payment to David or Thomas would have interrupted prescription *quoad* James. It is a rule of law not to carry homologation beyond the intention of parties, and that rule I would observe *here*. I see no evidence that the eldest son meant to homologate as to James.

JUSTICE-CLERK. I lay aside the father's deed altogether: the homologation pleaded is only as to the son's deed. I cannot distinguish between this case and the case of a deed null for want of solemnities, and yet homologated. The law of Scotland is not so whimsical as to split acts of homologation when there is but one deed. I speak with the more firmness in this cause, for the question was *in terminis* decided, *January* 1686, Erskine.

GARDENSTON. Here is one deed and one sum, though payable to three creditors. I cannot divide the homologation.

COALSTON. I doubt as to the principles of the decision 1686. But, in respect of that decision, I acquiesce in the opinion of the majority.

On the 13th January 1774, "the Lords repelled the reasons of reduction;" adhering to Lord Elliock's interlocutor.

Alt. R. M'Queen. *Alt.* A. Wight.